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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 2643 OF 2000

DIVISION BENCH: **HON. SHRI L.C. BHADOO, &**
HON. SHRI DHIRENDRA MISHRA, JJ

Appellants :

1. Balram, son of Ramchandra, aged 36 years,
2. Sonabai, W/o Ramchandra, aged 57 years,
3. Sumittra Bai, W/o Balram, aged 28 years.

All residents of village Parsuli, Police Station Devri, Disttt. Durg, M.P.

Versus

Non-applicant : The State of Madhya Pradesh.

Presence:
Mr. Abhay Tiwari, counsel for the appellants.
Mr. U.N.S. Deo, Addl. Public Prosecutor for the State.

O R A L J U D G M E N T

(11th April 2007)

PER L.C. BHADOO, J

This appeal is directed against the judgment of conviction and order of sentence dated 12th October 2000 passed by Additional Sessions Judge, Balod, Distt. Durg in Sessions Trial No.

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292/1999 whereby the learned Additional Sessions Judge after holding the accused/appellants Balram, Sonabai and Sumittra Bai guilty under Sections 302/34, 120B, 201 and 498-A of the Indian Penal Code, sentenced each of them to undergo imprisonment for life, imprisonment for life, seven years' R.I. and three years' R.I. respectively.

2. Case of the prosecution, in brief, is that Devlabai (since deceased) was married to accused Balram twenty years back. Sister of Devlabai namely Devkunwar was married in the village Orma. Out of the wedlock of accused Balram and Devlabai, Devlabai gave birth to one son namely Shambhu (PW-12). When Shambhu was about 9 years' old, accused Balram brought accused Sumittra Bai as his second wife and out of their wedlock one son namely Kailash was born. Accused Balram used to quarrel with Devlabai. Sumittra Bai also used to quarrel with Devlabai. Being fed up with these quarrels, once Devlabai went to her sister's residence at village Orma and then came back to village Parsuli after 15 days. In the year 1997 some quarrel took place between accused Sumittra Bai and deceased Devlabai, on which Devlabai went to her parental house at village Gunderdehi. Eight days thereafter Jagatram (PW-3), brother of Devlabai, brought her at village Parsuli where Devlabai disclosed to Jagatram that accused Balram used to beat her. On 1.5.1999 accused Sonabai went to Gunderdehi and informed Jagatram that Devlabai is

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missing since the night of Thursday, she has come in search of her. On 2.5.1999 accused Sonabai lodged a missing report (Ex.P/23) in Police Station Devri to the effect that Devlabai is missing since the night of 29.4.1999. On 7.5.1999 S.H.O. Police Station Devri Mohd. Farhan Qureshee (PW-15) registered First Information Report (Ex.P/24) and during investigation the brothers of Devlabai suspected the murder of Devlabai, on which S.H.O. Mohd. Farhan Qureshee (PW-15) inquired from accused Balram. On 8.6.1999 accused Balram gave memorandum (Ex.P/8) to the effect that dead body of Devlabai is buried in the kitchen garden and ornaments of Devlabai have been concealed in the house, pursuant to which accused got recovered the ornaments of Devlabai i.e. gold ear tops, big nose ring, one pair of silver anklet, one silver chain, one silver ring of foot finger (*Bichchiya*) under Ex.P/10. At the instance of the accused Balram after digging the pit, dead body of Devlabai was exhumed, there were clothes on the body, silver hair pin & head hairs which were seized under Ex.P/11 and P/12. Head hairs of Devlabai stuck in the door frame of the house of accused Balram, were seized under Ex. P/13. The dead body was identified by Jagatram, brother of deceased and by Mohan, Purushottam (PW-4) and Jagdish (PW-9). They also identified the clothes, pieces of bangles and hair pin. Notices Ex.P/2 and Ex.P/4 were given to the Panchas before preparation of inquest report (Ex.P/1) on the body of deceased Devlabai, by Executive Magistrate C.K. Sahu (PW-1). Dead body of Devlabai

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was sent for postmortem examination under Ex.P/15. Dr. S.K. Meshra (PW-11) and Dr. R.K. Goure conducted postmortem on the body of deceased Devlabai. Investigating officer Mohd. Farhan Qureshee seized the bones of deceased under Ex.P/17. After completion of investigation charge sheet was filed against the accused persons Balram, Sonabai and Sumittra Bai in the Court of Judicial Magistrate First Class, Balod who in turn committed the case to the Sessions Judge, Durg from where learned Additional Sessions Judge received the case on transfer for trial.

3. Prosecution in order to establish charge against the accused persons examined 15 witnesses. Statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which they denied the material appearing against them in the prosecution evidence and stated that they are innocent and have been falsely implicated in the crime. Accused Balram had stated that he does not know anything about Devlabi.

4. Learned Additional Sessions Judge heard counsel for the respective parties and after perusal of the record convicted and sentenced the accused/appellants as aforementioned.

5. We have heard Mr. Abhay Tiwari, counsel appearing on behalf of accused/appellants and Mr. U.N.S. Deo, Addl. Public Prosecutor for the State.

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6. Having heard counsel for the parties, we have perused judgment of the trial and the material available on record.

7. Mr. Abhay Tiwari argued that there is no evidence on record to establish the charge of conspiracy and murder of Devlabai by the accused persons. He further argued that there is no evidence to establish the charge under Section 498-A of the IPC, at the most only offence under Section 201 of the IPC is made out against accused Balram. He also argued that there is no evidence on record to connect accused Sumittra Bai and Sonabai with the crime in question.

8. On the other hand, Mr. U.N.S. Deo, supported impugned judgment of the trial Court.

9. In the present case, there is no ocular or direct evidence against the accused persons connecting them with the crime in question. The whole case rests on the circumstantial evidence and as per settled law in order to rest conviction based on circumstantial evidence as has been held by the Apex Court in the matter of in the matter of **Dhananjoy Chatterjee Vs. State of W.B.** reported in **(1994) 2 SCC 220,** the circumstantial evidence must satisfy the following tests:

(i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

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(ii) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(iii) the circumstances, taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(iv) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

10. The prosecution has tried to establish the charges against the accused persons based on the following circumstances:

(i) that the relations between accused Balram and deceased Devlabai were not cordial as accused used to beat Devlabai particularly after bringing Sumittra Bai, the relations between the two worsened,

(ii) that while in police custody, accused Balram gave memorandum Ex.P/8 regarding burying of dead body of Devlabai as also concealment of ornaments of Devlabai in his house,

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(iii) that accused knowingly gave false information (Ex.P/23) in the police station Devri regarding missing of Devlabai.

11. As far as first circumstance is concerned, PW-2 Kanahaiyalal has stated that there was continuous dispute between accused Balram and deceased Devlabai, therefore, the accused persons were caste out by the society. PW-3 Jagatram, brother of deceased Devlabai, has stated that Devlabai was married with accused Balram 20 years back and out of their wedlock there was one son of four years namely Shambhu. He has stated that some 12-13 years back Devlabai had disclosed to him that accused has brought accused Sumittra Bai as his wife. She used to complain that accused Balram commits *marpeet* with her. She had also disclosed about beating by other accused persons. 5-6 years back on account of that her sister Devlabai had gone to his sister's house at village Orma and came back to village Parsuli after 15 days. After one and half year, Devlabai informed him that accused Balram has threatened to commit her murder. He went to leave his sister Devlabai at village Parsuli after eight days. Sonabai informed him that Devlabai is missing, on which he suspected that she must have been murdered. On 8.6.1999 police station Devri called him and body of deceased Devlabai was found in the kitchen garden of Bishal. PW-12 Shambhu, son of accused Balram and deceased Devlabai, has stated that when his mother was alive he

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went to village Orma to reside there with his aunt as his father Balram used to beat him, therefore, his mother Devlabai had sent him to his aunt's house at village Orma. His father used to beat him and was not willing to get him educated. While he was in Orma he heard that his mother was missing. Thereafter, he came back to village Parsuli where after a month he was informed by the police that his mother has been buried in the kitchen garden after committing murder. The dead body was exhumed from the earth. Therefore, from the above evidence of PW-2 Kanahaiyalal, PW-3 Jagatram and PW-12 Shambhu, it is established that relations between accused and deceased Devlabai were strain and accused Balram was in the habit of beating Devlabai, which aggravated after accused brought accused Sumittra Bai and kept her in his house as his wife where accused Balram and Devlabai were residing.

12. So far as second circumstance is concerned, the investigating officer Mohd. Farhan Qureshee (PW-15) has stated that while in police custody accused Balram gave memorandum Ex.P/8 regarding body of deceased Devlabai as also ornaments of Devlabai and at the instance of accused Balram, the dead body was exhumed and the same was seized under Ex.P/11. Accused Balram also gave information that the ornaments of deceased i.e. ear rings, nose ring, anklet etc., have been concealed in his house and got the same recovered under Ex.P/10. The accused Balram

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gave particulars (Ex.P/ 15) of the incident which was recorded by him at the instance of the accused. He seized one bicycle, rope, spade and *Dhamela* at the instance of accused under Ex.P/ 9. Sari, head hair of deceased were seized under Ex.P/ 12. Head hair stuck in the door frame of the house of accused Balram was taken into possession under Ex.P/ 13. PW-1 C.K. Sahu, Executive Magistrate has stated that at the instance of accused Balram putrefied body was exhumed after digging the pit, there was a sari on the body and Panchanama Ex.P/ 1 was prepared. PW-4 Purushottam has stated that on 8.6.1999 he went along with SHO, P.S. Devri in the kitchen garden of father-in-law of accused Balram where notice Ex.P/ 4 was given to him which bears his signature from 'A' to 'A' portion. The body was exhumed after digging the pit, Panchanama (Ex.P/ 5) was prepared which bears his signature. Identification memo (Ex.P/ 6) regarding clothes taken out from the pit, was prepared by Tehsildar. Panchanama Ex.P/ 1 was prepared by the Tehsildar. PW-5 Shivkumar has also corroborated the above evidence and has stated that body of deceased Devlabai was exhumed after digging the pit from which stinking bones and clothes were taken out. Panchanama Ex.P/ 5 was prepared which bears his signature from 'B' to 'B' portion. Ex.P/ 1 also bears his signature from 'C' to 'C' portion. Spade, ornaments and other articles were recovered at the instance of accused Balram under Exs. P/ 9 and P/ 10. Panchanama (Ex.P/ 11) of the pit from where body was exhumed, was prepared by the police. Clothes seized

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from the place where the body was exhumed, were taken into possession under Ex.P/12. PW.-9 Jagdish has also stated that body was exhumed in his presence and the bones, clothes, blouse, petticoat, hair pin, were taken out which belonged to his sister Devlabai and the same were seized under Ex.P/6 which bears his signature from 'B' to 'B' portion. The defence has not been able to discredit the evidence of these witnesses by cross-examining them regarding recovery of body of Devlabai in the form of bones, sari and other articles, therefore, it is established that the body in the form of bones, sari etc. as also the ornaments of Devlabai were recovered at the instance of accused Balram.

13. The body of deceased Devlabai was identified on the basis of clothes seized from the pit from where the body was exhumed at the instance of the accused Balram. PW-10 G.R. Soni, Naib Tehsildar has stated that on 7.7.1999 at the request of police station Devri, identification of ornaments was done. The said ornaments were correctly identified by Jagatram, Mohan and Shambhu. Article B-1, B-2 as Anklet, C-1, C-2, article B as tops, D-1, D-2 as *Bichchiya*, article E as chain and article F as nose ring were identified. Identification memo Ex.P/3 was prepared, which bears his signature.

14. Body of deceased Devlabai was identified on the basis of clothes which were recovered from the pit from where the body was

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exhumed in a decomposed condition at the instance of the accused and memo Ex.P/6 was prepared which has been proved by the investigating officer Mohd. Farhan (PW-15) and Purushottam (PW-4) who has stated that clothes were taken out from the pit and identification memo Ex.P/6 was prepared in which the clothes were identified to be of deceased Devlabai. PW-9 Jagdish has also stated that based on the clothes the body of Devlabai was identified and memorandum (Ex.P/6) to that effect was prepared which bears his signature from 'B' to 'B' portion, therefore, on the basis of identification memorandum Ex.P/6 and evidence of PW-15 Mohd. Farhan Qureshee, investigating officer, PW-4 Purushottam and PW-9 Jagdish, it is established that the body exhumed from the pit at the instance of accused Balram was of deceased Devlabai as the same was correctly identified by the above witnesses on the basis of sari, blouse, petticoat, hair pin etc. taken out from the pit along with the dead body.

15. As for the third circumstance, accused Balram and Sonabai gave missing report Ex.P/23 in the police station Devri on 2.5.1999 to the effect that Devlabai is missing since Thursday night i.e. 29.4.1999 whereas during investigation at the instance of accused Balram the body of deceased Devlabai was exhumed from the pit situated at kitchen garden of his father-in-law, therefore, it is established that false information was given by accused Balram in the police station regarding missing of Devlabai knowingly the

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fact that after committing the murder of Devlabai he had buried the body in the kitchen garden of his father-in-law.

16. Learned counsel for the accused/appellants further argued that there is no evidence to indicate that accused Balram committed the murder of Devlabai, therefore, offence under Section 302 of the IPC is not made out against him, but we are not convinced by the above contention of counsel for the accused/appellant for the reason that in the first instance accused gave false information in the police station regarding missing of Devlabai since 29.4.1999 and thereafter during investigation he got the dead body of Devlabai recovered at his instance from the kitchen garden of his father-in-law and bones of the body along with clothes of Devlabai were recovered at his instance after digging the pit. Moreover, it is established that after bringing Sumittra Bai and keeping her as his second wife, the relations between accused Balram and deceased Devlabai worsened, he started beating Devlabai, as a result of which Devlabai used to leave her house and once went to her sister to complain to her relatives, therefore, if all the circumstances are taken together they unerringly point towards the guilt of accused Balram and looking to the conduct of the accused that he knowingly lodged a false missing report of Devlabai and thereafter, during investigation got the body of Devlabai recovered from the pit, the only irresistible conclusion can be drawn that accused Balram committed the

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murder of Devlabai and as such, accused Balram has rightly been convicted by the trial Court under Section 302 of the IPC. Similarly, accused caused disappearance of evidence of offence in order to screen himself from legal punishment and gave false information regarding missing of Devlabai which he knew to be false, therefore, offence under Section 201 of IPC has also been established against accused Balram.

17. As far as the offence under Section 120-B of IPC is concerned, there is no evidence on record which establishes that accused Balram along with co-accused Sonabai and Sumittra Bai entered into a criminal conspiracy to commit the murder of Devlabai, therefore, offence under Section 120-B of IPC is not established against any of the accused persons. So far as offence under Section 498-A of the IPC is concerned, there is also no evidence that accused beat the deceased as a result of which she sustained grave or fatal injuries which were dangerous to life, whereas there is only statements on record to the effect that accused Balram used to beat Devlabai. Therefore, merely on such type of evidence conviction under Section 498-A of the IPC cannot be sustained.

18. So far as involvement of accused Sonabai and Sumittra Bai in crime in question is concerned, there is not even iota of evidence on record to suggest that they were sharing common intention with

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accused Balram to commit murder of Devlabai or that they were party to causing disappearance of the evidence by concealing the body of deceased. There only one circumstance appearing against Sonabai is that she along with accused Balram went to police station Devri and lodged missing report Ex.P/23. But, merely on the basis of this circumstance it is not safe to hold that Sonabai was party to the murder and causing disappearance of evidence because as per prosecution case, accused Balram after committing murder carried the dead body on a bicycle and buried the same in the kitchen garden of his father-in-law. Therefore, from the above circumstances it can be inferred that accused Sonabai might have lodged the missing report at the instance of accused Balram that Devlabai was missing from his house.

19. On the basis of aforesaid discussion we do not find any legal, convincing and clinching circumstantial evidence connecting the accused Sonabai and Sumittra Bai with the crime in question that they entered into a conspiracy with accused Balram to commit murder of Devlabai, thereafter caused disappearance of evidence to screen themselves from legal punishment or that they subjected Devlabai to cruelty.

20. In the result, conviction and sentence imposed upon accused Balram under Section 302/34, 201 of IPC are maintained. However, his appeal to the extent of conviction and sentence

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imposed upon him under Section 120-B and 498-A is allowed and conviction and sentence imposed upon him under these sections are set aside.

21. The appeal of accused Sumittra Bai and Sona Bai is allowed. Their conviction and sentence under Sections 302/34, 120-B, 498-A and 201 of IPC are set aside. They are acquitted of all the above charges. They are stated to be on bail, therefore, their bail bonds stand discharged.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

Khan

(पीछे देखिये)